

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE ROGER L. EFREMSKY, JUDGE

In Re: ) Case No. 09-52226-RLE (7)  
SEEQPOD, INC., )  
Debtor. ) WARNER BROS. RECORDS'  
 ) MOTION to COMPEL  
 ) EXAMINATION under  
 ) BANKRUPTCY RULE 2004  
 )  
 )  
 ) Wednesday, March 24, 2010  
 ) San Jose, California

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Appearances via telephone:

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1       Wednesday, March 24, 2010

11:34 o'clock a.m.

2                   P R O C E E D I N G S

3                   THE CLERK: This is the United States Bankruptcy Court  
4                   for the Northern District of California. Court is now in  
5                   session. Item 1, SeeqPod, Inc.

6                   THE COURT: Can we have appearances on the phone,  
7                   please?

8                   Do we have Mr. Goldman? Mr. Scibilia? Ms. Young?  
9                   Operator?

10                  THE OPERATOR: One moment, Your Honor.

11                  Counsel are on line.

12                  THE COURT: All right. Counsel, -

13                  MR. GOLDMAN: Hi. I'm Seth Goldman. Seth Goldman  
14                  from Munger, Tolles and Olson -

15                  THE COURT: All right. Good morning.

16                  MR. GOLDMAN: - on - good morning.

17                  MR. SCIBILIA: Frank Scibilia from Pryor Cashman.

18                  THE COURT: And do we have Ms. Young?

19                  THE OPERATOR: Your Honor, this is the operator. Ms.  
20                  Young said she's not making an appearance today.

21                  THE COURT: Okay. Very good.

22                  All right. Mr. Goldman and Mr. Scibilia, there is no  
23                  one else in court. What have you heard from Mr. Charles?

24                  MR. GOLDMAN: Your Honor, we have not heard anything  
25                  from Mr. Charles or from Mr. Franks.

1                   THE COURT: Okay.

2                   MR. GOLDMAN: And that was after filing the motion and  
3 that was after numerous attempts to meet and confer that failed  
4 and resulted in a motion.

5                   THE COURT: Is Mr. Charles basically just telling you  
6 that he's not hearing from his client and he's attempting to  
7 contact him but he's not getting a response?

8                   MR. GOLDMAN: That is how it appears from the last  
9 communications with Mr. Charles, Your Honor, which was I think  
10 mid February.

11                  THE COURT: All right. Yes, go ahead, Ms. Barnhill.

12                  THE CLERK: I do have an email from Mr. Charles.

13                  THE COURT: And what does Mr. Charles say?

14                  THE CLERK: He says, "I am counsel for the debtor in  
15 the above matter. I was served with a motion that will be heard  
16 telephonically today. The certificate of service lists me as  
17 counsel for Mr. Franks, which I am not. I did not get a  
18 CourtCall notice. Would you like me to appear or call in?"

19                  THE COURT: Let's see if we can get him on the phone.

20                  THE CLERK: I responded that he could either appear or  
21 go through CourtCall.

22                  THE COURT: And he's done...

23                  MS. YOUNG: Unless he's on CourtCall...

24                  THE COURT: Can - we're not able to contact him and  
25 put him online?

1           THE CLERK: I can...

2           THE COURT: Gentlemen, we're going to see if we can  
3 get Mr. Charles on the phone.

4           MR. SCIBILIA: Thank you, Your Honor.

5           MR. GOLDMAN: Thank you.

6           THE CLERK: (Speaking on the telephone, not  
7 transcribed herein.)

8           Mr. Charles is on the line.

9           THE COURT: All right. Mr. Charles, can we have your  
10 appearance, please?

11          MR. CHARLES: Gregory Charles, counsel for the debtor.

12          THE COURT: All right. Good morning.

13          You're not here, Mr. Franks is not here. Can you  
14 enlighten the Court as to what Mr. Franks is doing?

15          MR. CHARLES: Well, first of all, I'm not Mr. Franks'  
16 counsel.

17          THE COURT: I'm aware of that.

18          MR. CHARLES: Yeah.

19          THE COURT: But he is the responsible individual.

20          MR. CHARLES: I understand that, Your Honor. Mr.  
21 Franks is – is out of town. He's been traveling for his  
22 business. I did contact Mr. Franks about the motion, obviously,  
23 and he said he'd be willing to appear for an examination. except  
24 for scheduling differences, the first time he's available is in  
25 the middle of May.

1                   THE COURT: Middle of May, really?

2                   MR. CHARLES: Yes.

3                   THE COURT: All right. Well, you can send this  
4 message to Mr. Franks from Judge Efremsky: I'm not playing  
5 games with him any longer. We will go about, I will basically  
6 deal with this today, but he has a very cavalier attitude and  
7 it's going to cost him financially. And I'm prepared to take  
8 some other drastic measures and I may need the assistance of the  
9 District Court, which if I make specific findings of facts and  
10 conclusions of law and the request that the District Court issue  
11 an appropriate order that will call for a U.S. Marshal to go out  
12 and arrest him if he needs to appear at an examination, but it's  
13 certainly going to happen well in advance of May.

14                   And I don't care how important he thinks he is, this  
15 is a federal court and he needs to adhere to the processes. So  
16 I would appreciate it if you would communicate that to him in  
17 writing.

18                   Now with that being said, Mr. Charles, do you have any  
19 suggestions to move this along in an expeditious matter to get  
20 your client's attention other than doing that type of a letter  
21 to him?

22                   MR. CHARLES: Again, he's not my client, Your Honor,  
23 but I will adhere to the Court's wishes that you – that I  
24 communicate that to him –

25                   THE COURT: Okay. Well, he's your responsible

1 individual and so unless you have somebody else you're  
2 communicating, he's it. And I realize you don't personally  
3 represent him, but I need someone to try to get ahold of him as  
4 counsel.

5 And, again, I'm not trying to put you on the hot seat,  
6 but obviously this gentleman doesn't get it -

7 MR. CHARLES: No, I've agreed to do that, Your Honor.  
8 I've agreed to do that. I would suggest that - you know, wait.  
9 You know, Your Honor, they could propose some dates, but -

10 THE COURT: I think what they're going to do is I'm  
11 going to give a date and he better be there, is what needs to be  
12 done. This is not - I'm not - we're not in a negotiation phase  
13 anymore -

14 MR. CHARLES: No, I understand that, Your Honor.  
15 But -

16 THE COURT: I'm not mad at you, Mr. Charles. What I'm  
17 just simply saying is that this isn't an issue of proposing  
18 dates. The gig's up.

19 MR. CHARLES: Well, I understand that, Your Honor.  
20 But in fairness to Mr. Franks, he was not served with a copy of  
21 this motion. This matter sat in abeyance for well over six  
22 months. This is a case in Chapter 7 right now. I don't know  
23 that counsel for the trustee wants to take this examination and  
24 - and I don't necessarily agree that he has this cavalier  
25 attitude. I mean this case has been on the backburner forever

1 and – and nothing was done until I got a call where I  
2 specifically said that I was not Mr. Franks' lawyer, and you say  
3 he's the responsible person, I understand that, but we've got a  
4 Chapter 7 trustee. And the Chapter 7 trustee has no interest in  
5 taking Mr. Franks' examination with respect to this issue.

6 So I don't know that he's being cavalier and I don't  
7 know that – that all these things are happening, but I'm willing  
8 to try to facilitate this. But I don't necessarily agree with  
9 the characterization of what's happening.

10 THE COURT: All right. Well, okay, –

11 MR. CHARLES: I mean this case has sat dead in the  
12 water.

13 THE COURT: All right. Mr. Charles, that's fine.  
14 Thank you.

15 Mr. Goldman and Mr. Scibilia, you've done this  
16 vis-a-vis a 2004 examination, and there's an adversary action on  
17 file. Perhaps what it would be best to do would be to notice  
18 his deposition and a production of documents as to him  
19 individually. And then there's no issue about him, whether he's  
20 a responsible individual. He's not the debtor, because I think  
21 as a responsible individual, I don't know if I can exercise my  
22 rights to have a U.S. Marshal go out and get him. I don't – I  
23 have not had an opportunity to look at that issue.

24 But – and I'm not taking sides whether your side's  
25 correct, Mr. Franks is correct. My point is simply I don't get

1 the impression that Mr. Franks is taking these proceedings  
2 seriously. And I do – I'm sorry, Mr. Charles, but I think he is  
3 taking a very cavalier approach to this.

4                   So, Mr. Goldman and Mr. Scibilia, wouldn't it be  
5 better to actually notice – serve him with a deposition notice  
6 and a production of documents, and deal with it in that way  
7 within these proceedings of the adversary action?

8                   MR. GOLDMAN: Excuse me. Well, let me say a couple of  
9 things in response to that, Your Honor. The one is that we have  
10 served a subpoena pursuant to Rule 45, pursuant to the order  
11 approving the Rule 2004 examination. And it's directed towards  
12 things that relate to the administration of the estate, which is  
13 the purpose of the examination.

14                   And back in June when this first came up we understood  
15 that the trustee was not inclined to proceed further to examine  
16 Mr. Franks. And we were invited to – to make a motion under  
17 Rule 2004 to get that information in aid of primarily the  
18 administration of the bankruptcy estate.

19                   THE COURT: Um-hum.

20                   MR. GOLDMAN: The adversary proceeding is stayed. And  
21 I'm not sure that the trustee is willing to sort of unstay that  
22 for the purpose of issuing a subpoena, but if that's the  
23 Court's –

24                   THE COURT: Well, here's – here's my point. I can  
25 appreciate where the trustee's counsel doesn't want to spend

1 time or money in this thing. But what I'm really getting from  
2 your – from your clients is they're very concerned about what  
3 he's doing with not just from the assets of the estate, because  
4 there's probably not going to be that much money into the estate  
5 here. You're concerned about him opening up another company  
6 that's going to have the same effect that you guys – you all  
7 complained about against SeeqPod. And maybe what needs to be  
8 done is to proceed with the litigation and do away with the stay  
9 of the litigation and take his deposition, do a request for  
10 production of documents, and proceed with that route.

11           Then I don't have to have a problem, where I don't  
12 have an actual – I can exercise additional powers that I have if  
13 you go after him individually. But that's my suggestion on  
14 this. Unless you have some other thoughts on here, but you're –  
15 we're not – we obviously don't –

16           MR. GOLDMAN: Well, –

17           THE COURT: – have Mr. Franks' attention on this.

18           MR. GOLDMAN: Right. Well, I guess I would say that  
19 Franks is not a defendant in the – in the adversary proceeding.

20           THE COURT: Maybe –

21           MR. GOLDMAN: And –

22           THE COURT: – he needs to be a defendant in another,  
23 maybe not an action pending in the Bankruptcy Court, maybe he –  
24 if you've got issues with him, maybe it's another action,  
25 whether it be in state court or federal court, I don't know.

1     But I've got a trustee. I assume if it was documents you want  
2     to review, I would assume the trustee has those documents with  
3     trustee's - you know, counsel for trus- - or with the trustee's  
4     counsel, that, you know, Barry Milgrom has those documents. If  
5     not, I guess my question would be why not.

6                 Maybe you can shed some light for the Court. What is  
7     it that you want from Mr. Franks that the trustee doesn't have?

8                 MR. GOLDMAN: Well, I think we with like to understand  
9     his dealings with the estate, if he has any property and if he's  
10    using it currently. And I think we would like to understand  
11    what impact, if any, Mr. Franks' conduct may have on a sale of  
12    the - excuse me - a sale of the assets.

13                You know, we had hoped that we would not need to go  
14    forward with this examination because we understood from the  
15    trustee that a sale might be pending back in the fall. And so  
16    we sort of held off. I mean we didn't want to be in this  
17    situation, to force the Court to take action if we didn't need  
18    to. But the recent events that we noted in the motion to compel  
19    suggest that it would be appropriate to go forward with the  
20    examination.

21               And I would like to reiterate that, you know, Mr.  
22    Franks has not provided a single date. He's never proposed a  
23    single date to us for his deposition. And it may be that he has  
24    no documents. And if that's the case it will be easy for him to  
25    comply with that aspect of the 2004 examination.

1                   THE COURT: Have you spoken with Mr. Milgrom about  
2 what documents that he has or has he requested documents from  
3 Mr. Franks and not received those or from Mr. Charles, counsel  
4 for SeeqPod?

5                   MR. GOLDMAN: I – as I understand it, Mr. Milgrom has  
6 received the documents that he has requested, but I don't know  
7 in detail how much he has requested.

8                   THE COURT: Wouldn't it be appropriate that if you  
9 could see what he's requested, what he's received, you might get  
10 the documents you're looking for as well as what Mr. Charles  
11 has, just make a request of Mr. Charles?

12                  I don't – Mr. Charles, do you have any documents of  
13 SeeqPod in your possession?

14                  MR. CHARLES: The documents were turned – I do not  
15 personally have documents in my possession. The only documents  
16 that came into my possession, Your Honor, were those relating to  
17 the adversary proceeding. All other documents that we had went  
18 to Mr. Milgrom. And it's my understanding that Mr. Franks  
19 provided everything that he had to Mr. Milgrom and actually  
20 worked with Mr. Milgrom on – on the proposed sale.

21                  I also note that I believe that Mr. Milgrom had taken  
22 the position that to the extent that the movants were seeking  
23 documents relating to the estate, that they should run that by  
24 Mr. Milgrom first as opposed to going directly to Mr. Franks.  
25 And I don't know whether that was done or not.

1                   THE COURT: I don't know. And it would seem to be  
2 logical to me that if documents have been produced to the  
3 trustee's counsel that, Mr. Goldman, someone would have made a  
4 request on Mr. Milgrom to provide copies of those documents so  
5 that you could review them and find out if he has, in fact,  
6 said, 'Give me all your documents,' and have some sort of  
7 certification to that effect, that he has all the documents,  
8 rather than trying to trace Mr. Franks around.

9                   I don't like what Mr. Franks is doing. I get the  
10 impression he's just ignoring everybody. And I know you have  
11 attempted to try to set up dates to take his deposition or his  
12 examination – do an examination of him. But maybe it's –

13                   MR. GOLDMAN: He –

14                   THE COURT: – going to take doing away with the stay  
15 of the litigation and notice his deposition in the adversary  
16 action. I realize he's not a party, he's not a named defendant,  
17 but you can certainly take his deposition there. And maybe  
18 that's more appropriate. And maybe that will get his attention.  
19 To the extent he's communicating with Mr. Milgrom, that if the  
20 trustee realizes they're going to have to spend some time and  
21 money dealing with that aspect of it, maybe that's the  
22 appropriate way. But I'm not convinced that doing a 2004  
23 examination, asking him to produce documents if, in fact, he's  
24 produced everything already to Mr. Milgrom, you might be able to  
25 get exactly what you want from Mr. Milgrom, especially since you

1 haven't asked Mr. Milgrom yet.

2 MR. SCIBILIA: This is Frank Scibilia, Your Honor.

3 May I raise a couple of points?

4 THE COURT: Please.

5 MR. SCIBILIA: I'm certainly - I have no objection to  
6 asking Mr. Milgrom, you know, for particular documents, but sort  
7 of the history of this is that - one of the things we're dealing  
8 with here is not really so much the - the infringement that  
9 occurred that's the subject of the adversary proceeding, but  
10 what Mr. Franks has been doing or claims in public documents to  
11 be doing with assets of the estate.

12 And I have raised - you know, first we learned that  
13 the estate that he was going to be selling, you know, the  
14 SeeqPod domain name, which was quite surprising to us because we  
15 thought that belonged to the estate, and we raised the issue  
16 with the trustee. The trustee informed us that that had  
17 actually been, you know, fraudulently transferred to an entity  
18 called Geneva Research, which was not disclosed in Mr. Franks'  
19 statement to the Court regarding the assets, okay.

20 So then - and the trustee said, you know, 'So we have  
21 no' - the trustee had no control over that domain name anymore,  
22 okay.

23 Then I raised that issue with the District Court in  
24 New York, because we actually had - the EMI plaintiffs actually  
25 had a complaint on file not only against SeeqPod but against Mr.

1 Franks personally in the Southern District of New York.

2                   And I raised – and what happened was there was a stay  
3 of course against SeeqPod, but there was actually a motion to  
4 dismiss on behalf of Mr. Franks. And when the motion was  
5 pending, I raised this issue with the federal court in a  
6 declaration and said, you know, Mr. Franks is basically the  
7 primary actor here. He – he's running around selling these  
8 assets that he says he doesn't control. They actually are in  
9 the custody of him, and he denied that in a statement to the  
10 federal court.

11                  In a sworn declaration he said: Oh, no, the SeeqPod  
12 domain name is actually under the control of the trustee, which,  
13 you know, was completely at odds with what the trustee had told  
14 us. And, as a result of that, you know, the motion, the case  
15 against him was dismissed, okay. And we just haven't, you know,  
16 decided to pursue that any further with him in New York because,  
17 you know, we can't even find him in this adversary proceeding.

18                  So – so he's really – you know, the issues here, he's  
19 saying one thing to the trustee and he's saying something else  
20 to the Southern District of New York. And all of this relates  
21 not so much to the infringement that occurred but to what he is  
22 doing.

23                  And the control of the domain name is very important  
24 because changes continue to be made to the website, and they  
25 shouldn't be. And the trustee says, 'I have no idea, I'm not

1 making the changes.' So somebody must be making the changes.  
2 And those changes are linking to other infringing websites and,  
3 presumably, eventually will infringe to his new website.

4                   So, you know, I'm not sure exactly whether or not  
5 pursuing him in the adversary proceeding is really – in a  
6 deposition the topics won't necessarily relate to the prior –  
7 the prior infringement, or I guess they will touch upon that.  
8 But they're sort of separate topics.

9                   THE COURT: Well, then what about bringing a motion to  
10 lift the stay, making a motion to – or not a motion, because I  
11 don't think anybody's responded, but amending the adversary  
12 action to not only deal with past infringement but potentially  
13 present and future infringements and just proceed with it?

14                   Because what I'm – what I'm really hearing is you're  
15 concerned about infringement in the past, present, potentially  
16 in the future that adversely affects your client's artists, your  
17 clients as the record producers, and that he's apparently got  
18 himself out of the action in the Southern District of New York  
19 District Court. You say he's filed a document there that  
20 contradicts what he told Mr. Milgrom. I assume you've provided  
21 that document to Mr. Milgrom, saying that to the extent you  
22 didn't have control over the SeeqPod domain name, he's filed a  
23 declaration with the Southern District of New York District  
24 Court saying just the opposite, that it is in fact under your  
25 control. I'd be curious to see, like to know what the trustee's

1 doing.

2           But I think this is all about infringement, whether in  
3 the past, present, or into the future. And if Mr. Milgrom's  
4 trying to sell this it may be, you know, that he's very  
5 sensitive about the money that's going to be expended because if  
6 he knows he can't get that much money, he doesn't want to spend  
7 a lot of time because it kind of defeats the whole purpose, and  
8 again I'm sympathetic to that. But, on the other hand, you've  
9 got a guy out there who apparently he's not cooperating here  
10 with the Court and he's going on. You have concerns. And I  
11 don't know what he's doing. I don't know with NIMBY, if it – if  
12 it's utilizing the technology that was involved in SeeqPod, I  
13 don't know.

14           But, Mr. Goldman, Mr. Scibilia, tell me, you know,  
15 give me something. Check with the trustee, see what documents  
16 he has. If it's just looking at documents and he's got  
17 everything you need, that might solve the problem. You don't  
18 need to take his – do an examination of him.

19           On the other hand, it sounds like what you really want  
20 to find out is what the heck is he doing now with this new  
21 company and that he may be potentially infringing upon your  
22 client's artists as well as the record companies.

23           Am I missing something?

24           MR. GOLDMAN: No. Well, this is Seth Goldman. I  
25 think that that's right to a large degree, but I think there are

1 a couple of other aspects. The one is to the extent to which  
2 he's using a state property and in particular the extent to  
3 which this could impact a sale.

4 I mean as a creditor of the estate we are still  
5 interested in facilitating a sale of the assets for the highest  
6 value. And, you know, -

7 THE COURT: But, Mr. Goldman, I have to say I'm not  
8 buying that. I don't see as your real concern because the  
9 amount of money that I'm led to believe is involved here is  
10 peanuts. And if the trustee's counsel is not all worked up  
11 about it, for - to have counsel for the record companies coming  
12 in and saying, 'We're really concerned, we want to see the  
13 estate maximize the assets,' I'm not buying it.

14 I think the real issue here is infringement. And I'm  
15 sympathetic to it. I want - you know, -

16 MR. GOLDMAN: Can I also make one other suggestion,  
17 Your Honor?

18 THE COURT: Yes.

19 MR. GOLDMAN: That is that under Rule 2005 the Court  
20 has the power to order the debtor, which is defined in Rule  
21 9001, includes, I believe, responsible individuals to comply  
22 with Rule 2004 examinations. And we would be willing to go  
23 through the trustee for documents, provided that a deposition  
24 date is set and we have the ability to depose Mr. Franks. And  
25 if documents are not available or become necessary following

1 that examination, then we could discuss with the Court how best  
2 to proceed to get those documents.

3 THE COURT: Okay. Here's my suggestion. Mr. Charles,  
4 if you'd be kind enough to write that letter to Mr. Franks, and  
5 again I appreciate the fact that you don't represent him. He is  
6 the responsible individual, but let him know -

7 MR. CHARLES: I will be, Your Honor. And I also just  
8 want to note for the record that I don't have authority to do  
9 anything in the Chapter 7 case, but since as an officer - since  
10 you've directed me to do it, I will do it.

11 THE COURT: Just say that Judge Efremsky's made that  
12 request and if you could - even if it's just let to him know  
13 that he needs to appear in this Court or to cooperate in having  
14 his examination, and that the Judge is not inclined to put this  
15 thing out to May. That's one. So if you could be kind enough  
16 to send him a letter to that effect, the Court would be greatly  
17 appreciative of that.

18 Two, -

19 MR. CHARLES: I will do that, Your Honor.

20 THE COURT: - Mr. Goldman and Mr. Scibilia, my  
21 suggestion is contact Mr. Milgrom, ask him to provide you with  
22 copies of the documents that he has received. I would hope that  
23 you would be able to make copies at your expense, but all  
24 documents so that you could review. Review them, assuming he  
25 can produce them immediately.

1           And then what we can do is I can give you a - I'll put  
2 this over a few weeks and we'll take it up at that juncture and  
3 possibly the interim. Maybe Mr. Franks will contact you and  
4 make arrangements. But at that point I can take it up and see  
5 if I want to issue a further order. But you have my attention  
6 as to what's going on here. I'm just trying to figure out the  
7 most efficient way to skin this cat.

8           Do you have any other thoughts, because what I'm - my  
9 question would be how much time do you need. I can put this  
10 over - I could put this over to April 14th.

11           MR. GOLDMAN: That - that would be fine for us, I  
12 think.

13           Frank, do you agree?

14           MR. SCIBILIA: Definitely.

15           THE COURT: Okay. So I'm going to continue this  
16 hearing to the 14th at 10:30. In the interim contact Mr.  
17 Milgrom.

18           MR. CHARLES: Keep in mind, Your Honor, I am - I am on  
19 vacation that week, and so to the extent you want me to  
20 participate I am - I will be out of town.

21           THE COURT: Is this Mr. Charles?

22           MR. CHARLES: It is, Your Honor.

23           THE COURT: All right. Now that's - you were kind  
24 enough to take the Court's call. I appreciate it. So I'm not  
25 looking for you to appear. You don't represent him. And so if

1 you're kind enough just to send that letter, that will be  
2 sufficient. So thank you.

3 MR. CHARLES: And I will pass that onto Mr. Franks.

4 THE COURT: Very good.

5 And I would suggest to counsel for the movants to send  
6 out a notice of continued hearing to the 14th of April at 10:30.  
7 Contact Mr. Milgrom in the interim. See if you can arrange  
8 those and then you can discuss with Mr. Milgrom and that Judge  
9 Efremsky is - will consider lifting the stay on the litigation  
10 so that you can go forward and notice the deposition.

11 I'm also going to take a look at the issue of whether  
12 the 2004 examination is the appropriate method here versus a  
13 deposition. Again, my concern is I really see to be an  
14 infringement issue for you and it might - I think the deposition  
15 might be the appropriate way to go, but I'm going to take a look  
16 at that. And I'll be prepared to deal with this on the 14th of  
17 April.

18 Gentlemen, anything else that you can - you want the  
19 Court to consider?

20 MR. GOLDMAN: No, Your Honor. Thank you.

21 MR. SCIBILIA: No, Your Honor. Thank you very much.

22 THE COURT: All right. Thank you.

23 MR. CHARLES: Thank you, Your Honor.

24 (The hearing was concluded at 11:58 o'clock a.m.)

25 -00-

State of California )  
 )  
County of San Joaquin ) SS.

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber through the American Association of Electronic Reporters and Transcribers, Certificate No. 00124. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

Susan Palmer  
Palmer Reporting Services

Dated April 8, 2010